



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 10 2011

THE ADMINISTRATOR

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton:

Thank you for your letter of March 2, 2011, regarding the settlement agreements that set a schedule for the Environmental Protection Agency to establish Clean Air Act new source performance standards (NSPSs) for greenhouse gas (GHG) emissions from fossil fuel power plants and petroleum refineries.

Congress directed EPA to establish and periodically revise NSPSs in the 1970 Clean Air Act, which Congress passed on a broadly bipartisan basis. The NSPS portion of the Act requires EPA to set and update standards to protect Americans from stationary source air pollution that endangers public health or welfare. The Act directs EPA to take cost and other factors into account when it sets or updates the standards.

EPA last updated NSPSs for fossil fuel power plants in 2006, and for petroleum refineries in 2008. In both instances, EPA declined to establish standards for GHG emissions. States and environmental groups filed legal challenges, arguing among other things that the rules were required to include GHG standards. After the Supreme Court decided *Massachusetts v. EPA* in 2007, EPA was granted a remand of the power plant rule for further consideration of the issues related to GHG emissions in light of the Supreme Court's decision. Similarly, EPA in 2009 granted reconsideration of the refineries rule with regard to the claim that EPA had failed to regulate GHG emissions in that rule. As of late 2010, EPA had not yet taken any action on the power plant remand or the reconsideration of the refineries rule, so the Agency again faced litigation over its failure to establish GHG emissions standards for those sources. Meanwhile, in December 2009, I had made the finding that GHG emissions from motor vehicles cause or contribute to air pollution that endangers public health and welfare.

To avoid wasting taxpayer money on further pointless litigation, and to follow the law as interpreted by the Supreme Court in *Massachusetts v. EPA*, the Agency late last year entered into settlement agreements that set a schedule for establishing the first-ever NSPSs for harmful carbon pollution from power plants and refineries. Those two sectors emit more GHG pollution than any other stationary source categories. Together, they account for nearly 40 percent of U.S. GHG pollution. EPA's initial evaluation indicates that there are cost-effective GHG emissions

control strategies for both source categories. The process for setting the NSPSs and related guidelines for existing sources has been and will continue to be open and transparent, with plenty of opportunity for participation by industry and other members of the public.

By reaching a settlement that provides deadlines by which EPA will complete a rulemaking process, the Agency avoided the risk that court-ordered schedules would be shorter and prevent EPA from proceeding in a measured and careful manner with the full involvement of all interested persons. It is important to emphasize that these settlements are not regulations. They set deadlines for action but do not make any determination about the substance of the final decision at the end of the process.

The process followed by EPA and the Department of Justice to finalize these settlements was consistent with how EPA and DOJ resolve litigation in all Clean Air Act cases, including past settlements with regulated entities and industry associations. Specifically, EPA and DOJ followed the public participation procedures mandated by Congress in section 113(g) of the Clean Air Act, under which interested persons have a 30-day period to comment on the proposed settlements. EPA issued a press release announcing the proposed settlement agreements on the day they were made public and sent to the Federal Register. Over 48,000 comments were received during the 30-day comment period from regulated entities, industry associations, states, environmental groups and individuals. After considering the comments (the vast majority of which expressed support for prompt standard-setting for GHG emissions), EPA concluded that the deadlines set by these settlements provide adequate time for EPA to conduct the rulemakings and finalized the settlement agreements.

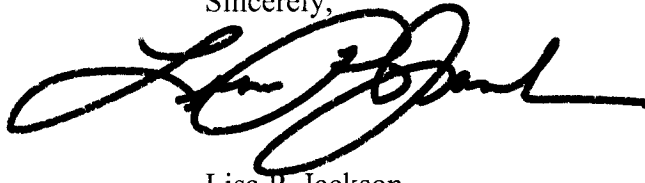
EPA is confident that the time frames established in the settlements will allow for full public participation and an open exchange of ideas. Already, EPA has demonstrated its commitment to these principles by holding five listening sessions at which representatives from the electric utility industry, the petroleum refinery industry, states, tribes, environmental groups and other interested parties provided their views directly to senior EPA decision-makers. Going forward, EPA will develop and publish proposed rules for public comment, and consider those comments before making any final decision on GHG emissions standards for power plants and refineries. As the Clean Air Act provides, any final standards will take into account cost considerations and any non-air quality impacts and energy requirements, among other factors.

Finally, I want to respond to your comments with respect to the provisions in the settlement agreements addressing guidelines for existing sources under section 111(d) of the Act. Under section 111(d), once EPA sets a new source standard for a given pollutant in a given source category, it is required to set guidelines for existing sources in the regulated source category (with certain exceptions not applicable to GHG emissions). Section 111(d) guidelines, like NSPS standards, must take into account costs, non-air quality impacts, and energy requirements. However, both the statute and EPA's regulations recognize that existing sources may not always be able to achieve the same levels of control at reasonable cost as new sources. Accordingly, they permit states and EPA to set less stringent standards or longer compliance schedules for existing sources where warranted.

Again, EPA is committed to establishing these new standards with full public participation and transparency. Moreover, EPA believes that any standards resulting from this process will reflect cost-effective measures to protect public health and the environment, and will help make American companies more competitive and spur the creation of good jobs for American workers.

Thank you for your letter and the opportunity to address your concerns. If you have further questions, please contact me or have your staff contact David McIntosh in EPA's Office of Congressional Affairs, at (202) 564-0539.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa P. Jackson', with a large, stylized loop at the end.

Lisa P. Jackson